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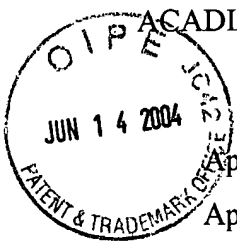
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

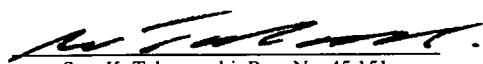
Applicant : Andersson, et al.  
Appl. No. : 10/802,970  
Filed : March 16, 2004  
For : AZACYCLIC COMPOUNDS  
Examiner : Not yet assigned  
Group Art Unit : Not yet assigned

CERTIFICATE OF MAILING

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

June 10, 2004

(Date)

  
Sam K. Tahmassebi, Reg. No. 45,151

**PETITION UNDER 37 C.F.R. § 1.53(e)(2)**  
**TO REVIEW THE NON-ACCORDANCE OF FILING DATE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby respectfully petition the Commissioner to review the above-captioned application for compliance with filing requirements, specifically those pertaining to the filing of drawings under 35 U.S.C. § 113 and 37 C.F.R. § 1.81, and accord the filing date of March 16, 2004 to the above-captioned application.

**FACTS**

The above-captioned application was deposited with the U.S. Postal Service in an Express Mail envelope on March 16, 2004, in compliance with 37 C.F.R. § 1.10. A copy of the Express Mail receipt is attached hereto as Exhibit A.

The specification of the above-captioned application refers to four sheets of drawings on pages 7. For the Office's convenience, Applicants have attached a copy of the four sheets of drawings hereto as Exhibit B. The Transmittal Letter, the Certificate of Mailing by "Express Mail," and the prepaid return postcard mailed along with the above-captioned application all indicated that four sheets of drawings were deposited along with the above-captioned application

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**Filed** : March 16, 2004

in the same envelope and the same date with the U.S. Post Office. A copy of these documents is attached hereto as Exhibit C. The postcard, signifying that the four sheets of drawings were included in the envelope, was stamped as received by the Office personnel and mailed back to Applicants' representatives. See Exhibit C. The Office personnel did not make any marks on the returned postcard indicating that the envelope contained less than what Applicants had stated to be in the envelope.

Furthermore, the above-captioned application is a continuation of the co-pending Serial No. 10/409,782, filed April 7, 2003, which in turn is a continuation of Serial No. 09/800,096, filed March 6, 2001. Both the Preliminary Amendment filed along with the above-captioned application, a copy of which is attached herewith as Exhibit D, and the Transmittal Letter for the above-captioned application, a copy of which is included in Exhibit C, incorporate by reference the entirety of the of the parent applications. The Transmittal Letter states:

The entire disclosure of the prior application [i.e., the parent '782 and '096 applications], from which a copy of the oath or declaration is supplied is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

(Emphasis provided.) The Preliminary Amended requests that the first paragraph of the specification to be amended to recite:

This application is a continuation of U.S. Patent Application Serial No. 10/409,782, entitled "AZACYCLIC COMPOUNDS," filed April 7, 2003, by Andersson, et al., which in turn is a continuation of U.S. Patent Application Serial No. 09/800,096, entitled "AZACYCLIC COMPOUNDS," filed March 6, 2001, by Andersson, et al., which in turn claims priority to U.S. Provisional Patent Application Serial No. 60/187,289, filed March 6, 2000, all of which are incorporated by reference herein in their entirety, including any drawings.

(Emphasis provided.) The disclosure of the parent applications included the four sheets of drawing.

On June 1, 2004, the Office of Initial Patent Examination (OIPE) of the U.S. Patent and Trademark Office mailed to the applicants' representative a Notice of Incomplete Nonprovisional Application. In the Notice, the OIPE informed the applicants that a filing date was not accorded to the above-captioned application because the application was deposited without drawings.

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**PETITION**

Applicants respectfully petition the Commissioner to review and reverse the decision of the OIPE and accord the filing date of March 16, 2004 to the above-captioned application.

35 U.S.C. § 113 and 37 C.F.R. § 1.81(a) require an application to include drawings if the drawings are necessary. The M.P.E.P. instructs that the OIPE considers drawings as necessary if the application refers to the drawings in the specification. M.P.E.P. § 608.02, p. 600-86. Since the specification of the above-captioned patent application refers to the drawings, then under PTO policy, the PTO deems the drawings to be necessary.

Applicants respectfully maintain that the application as filed with the PTO on March 16, 2004 was complete. Applicants respectfully maintain that the four sheets of drawings were included in the original envelope containing the specification, as evidenced by the entries in the Certificate of Mailing by "Express Mail," and the prepaid return postcard. Furthermore, Applicants respectfully submit that the drawings were in fact received by the Office Mail Room, as evidenced by the fact that the returned postcard was not marked in any way by the Office personnel to indicate that the envelope did not contain the four sheets of drawings. Based on this evidence, Applicants respectfully submit that a complete application was submitted on March 16, 2004, and request that the Commissioner review and reverse the decision of the OIPE and accord the filing date of March 16, 2004.

Alternatively, Applicants note that the incorporation by reference sentence in the Transmittal Letter and the Preliminary Amendment for the above-captioned application considers the disclosure of the parent applications to have been "part of the disclosure of the accompanying application," and to have been incorporated by reference "including any drawings." As mentioned above, the drawings were in fact a part of the disclosure of the parent applications. Therefore, since the drawings of the present application were part of the parent applications and the parent applications are part of the above-captioned application, it necessarily follows that the drawings were part of the above-captioned application on March 16, 2004, the date the above-captioned application was deposited with the U.S. Post Office. On that date, then, the above-captioned application was complete.

Applicants respectfully maintain that the inclusion of a hard copy of the drawings is not necessary to satisfy the requirements of 35 U.S.C. § 113 since the application incorporates by reference the entirety of the co-pending parent application which includes the drawings.

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However, for the Office's convenience, Applicants have attached herewith a copy of the four sheets of drawings as Exhibit B. Applicants submission of the drawings should in no way be interpreted as Applicants' acquiescence in the finding of the OIPE that the application was submitted without the four sheets of drawings, which finding Applicants respectfully traverse.

Applicants therefore petition the Commissioner under 37 C.F.R. § 1.53(e)(2) to

- review the notification sent by OIPE,
- find the above-captioned application to be complete and in compliance with the requirements of 35 U.S.C. § 113 and 37 C.F.R. § 1.81(a), and
- reinstate the filing date of March 16, 2004.

Applicants note that this petition is being filed within two months of the mailing date of the Notice, and therefore is considered a timely petition under 37 C.F.R. § 1.181(f).

#### PETITION FEE

Since Applicants believe that the Notice was sent in error and that the application as filed was indeed complete, Applicants believe that no petition fee is required. However, if the Commissioner deems that a petition fee, for example a fee pursuant to 37 C.F.R. § 1.17(h), is necessary, the Commissioner is hereby authorized to charge the required fee to Deposit Account No. 11-1410 for the correct amount.

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**CONCLUSION**

Applicants respectfully petition the Commissioner to find the above-captioned application to be complete since the drawings were included in the application as originally filed, and the drawings were included in two parent applications, both of which are incorporated by reference in their entirety in the present application. Applicants respectfully petition the Commissioner to reinstate the filing date of March 16, 2004 for the above-captioned patent application.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 10, 2004

By: Sam K. Tahmassebi

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